

STATE REPORTER
OF
EDUCATION LAW

VOLUME 6

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF
MONTANA:

KAREN TINNES,

Appellant,

v.

No. OSPI 105-86

Decided: Apr. 6, 1987

TRUSTEES, YELLOWSTONE COUNTY
SCHOOL DISTRICT NO. 4,

Respondents.

Findings of Fact, Conclusions of Law and Order by Ed Argenbright,
State Superintendent.

Appeal from the Big Horn County Superintendent of Schools sitting for
the Yellowstone County Superintendent of Schools.

TEACHERS, Whether the County Superintendent made an error of law by
not providing a reason which was not personal to the teacher for
dismissal based on the financial condition of the school.

RIF

Preliminary Statement

This is an appeal from the findings of fact, conclusions of law and order of the Big Horn County Superintendent of Schools, sitting for the Yellowstone County Superintendent of Schools. The appeal stemmed from a decision of the Canyon Creek School District of trustees not to renew Appellant's contract for school year 1986-1987.

The parties submitted briefs according to a briefing schedule set out by this State Superintendent. The record in this matter has been transmitted pursuant to 10.6.118 Administrative Rules of Montana. Both parties were represented by counsel.

Having reviewed the record on appeal and the briefs and having applied the standard of review found in section 10.6.125 ARM and 2-4-704 MCA, this State Superintendent is now prepared to enter these:

FINDINGS OF FACT

1. Karen Tinnes (Appellant) was a nontenured teacher employed by the Canyon Creek School District.

2. On April 11, 1986, Appellant received a timely letter from the chairman of the board of trustees. The letter stated:

"Due to the financial situation of Canyon Creek School District #4, the Board of Trustees voted on March 26, 1986 to not renew your contract with the district.

"This notice of non-renewal is issued pursuant to section 20-4-206 of the School Laws of Montana annotated 1975."

3. Appellant appealed the decision to the County Superintendent of Yellowstone County. Appellant contended that the reasons were not true and did not conform to the Bridger test.

4. Yellowstone County Superintendent accepted jurisdiction and issued a Notice of Hearing on April 30, 1986. He set the hearing on the appeal for June 10, 1986. A separate appeal was simultaneously raised with Appellant's but has since been resolved.

5. The Yellowstone County Superintendent was subsequently disqualified and the Big Horn County Superintendent was invited to accept jurisdiction.

6. Appellant requested that the County Superintendent issue subpoenas to force the attendance of several witnesses. The County Superintendent refused to issue the subpoenas, concluding that Appellant was not permitted to put on a factual case but was limited to a "hearing" of legal arguments as presented by counsel.

7. The County Superintendent concluded, after review of section 20-4-206 MCA and Bridger Education Association v. Board of Trustees, ___ Mont. ___, 41 St.Rep. 533, 678 P.2d 659 (1984) [3 Ed Law 99], that

Appellant had been provided with the reasons for which she was nonrenewed (financial condition of the district) and that the reason satisfied the intent of the Bridger test, the guidelines set forth in Allen v. Trustees, Roosevelt County School District #3, OSPI 67-84 and Allen v. Trustees, Roosevelt County School District #3, OSPI 85-85, and the statutory requirements of section 20-4-206 MCA.

From the foregoing Findings of Fact, this State Superintendent now draws these:

CONCLUSIONS OF LAW

1. This State Superintendent has jurisdiction over this matter pursuant to section 10.6.121 et seq. ARM and 20-3-107 MCA.

2. The record on this matter is complete as provided by section 10.6.118 ARM.

3. This State Superintendent has applied the standard of review found in section 10.6.125 ARM and has applied the rule set forth in Bridger, supra.

4. Appellant contends that the County Superintendent made an error of law by not providing a reason which was not personal to the teacher. h.h.

5. There has been no contention raised in the Notice of Appeal filed by Appellant that the reason given is not true. ✓

6. There is no requirement set forth in Bridger for the County Superintendent to conduct a hearing to determine the truth or validity of the reason and such has been continually stated by this State Superintendent. See Allen v. Trustees, Roosevelt County School District #3, OSPI 85-85, Conway v. Southwestern Montana Education Cooperative, OSPI 73-84, and Easton v. Trustees, Missoula County School District #1, OSPI 102-86. Appellant cites no Montana authority entitling a nontenured teacher to a factual hearing to determine the validity of the reasons for nonrenewal.

7. There is no requirement to provide a nontenured teacher a hearing to determine the truth or validity of the reason when the reason given relates to the financial condition of the school district. Neither the hearing officer below nor this hearing officer is charged with an inquiry into the truth or falsity of the causes alleged. This is true whether the reasons given are personal to the teacher or are for other reasons, such as the financial condition of the school district. |||

8. The County Superintendent of Schools has limited jurisdiction to accept a case on nonrenewal of a nontenured teacher. Such jurisdiction is limited to contested cases alleging that the written reasons given to the teacher by the board of trustees do not meet the Bridger test. The County Superintendent must decide on receipt of a "Notice of Appeal" whether the reasons given inform the

nontenured terminated teacher, in a general manner, what undesirable qualities merit a refusal to enter into a further contract.

9. The Bridger decision was limited to the application of 20-4-206(3) MCA when undesirable qualities of a teacher are at issue. The Montana Supreme Court intended that the reasons be provided so that the teacher could improve his/her skills in the areas cited; it did not intend to create a just or good cause standard to be proved.

10. The requirements set forth in section 20-4-206 MCA, providing a nontenured teacher in writing the reasons for termination of employment, do not apply to cases in which a nontenured teacher is terminated when the financial condition of the school district requires a reduction in the number of teachers employed. See section 20-4-206 (4) MCA. The Bridger test is not applicable because the reason was not personal regarding undesirable qualities of the teacher, and section 20-4-206(4) MCA provides for no further right on the part of the nontenured teacher when the financial condition of the district requires reduction of staff positions.

11. Financial necessity for nonrenewal of nontenured teachers due to the financial conditions of a school district is a legitimate reason. See Cummings v. Trustees, Missoula County School District #1, OSPI 109-86.

12. The sole discretion in determining whether the financial condition of the school district requires a reduction in the number of teachers remains with the local board of trustees. See section 20-3-324 (1) MCA, Article X, Section 8, Montana Constitution (1972).

13. The Acting County Superintendent of Schools did not commit an error of law nor has Appellant demonstrated that substantial rights of Appellant have been prejudiced. See section 2-4-704 MCA and section 10.6.125 ARM.

From the foregoing Findings of Fact and Conclusions of Law, this State Superintendent now renders this:

ORDER

That the Findings of Fact, Conclusions of Law and Order of the Acting County Superintendent of Yellowstone County is affirmed:

That the decision not to renew Appellant by the Board of Trustees of Canyon Creek School District #4 is affirmed.

IT IS SO ORDERED.

DATED this 6th day of April, 1987.

s/Ed Argenbright
State Superintendent